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TAGS: EINV ECON ELAB PGOV MX VE
SUBJECT: MONTERREY FIRMS FIND THAT VENEZUELA IS A TOUGH PLACE TO DO BUSINESS

REF: CARACAS 624

CLASSIFIED BY: Bruce Williamson, Consul General, Consulate General of Monterrey, State.
REASON: 1.4 (d)

¶1. Summary. (C) Two large Monterrey-based multinational companies are struggling in the toxic Venezuelan business environment, as one looks for fair compensation to exit and the other hopes to keep their heads down and hold on. President Chavez has nationalized the cement holdings of high-level Cemex, and Femsa faces recurring blockages of its coca cola distribution plants by former employees of a company Femsa purchased. Although the challenges are distinct, high-level Cemex and Femsa executives tell us that they have found that no Venezuelan institutions are capable of standing up to the Chavez government, leaving them no protection from arbitrary governmental decisions. End Summary.

¶2. (C) According to Javier Trevino, Senior Vice President for Communications and Public Affairs for Cemex -- the largest cement company in the world -- the company learned that on June 24 the Government of Venezuela (BRV) has published a decree nationalizing the cement industry, culminating the process that began in April to nationalize three foreign cement companies (see reftel). The BRV initially proposed that the BRV control 60% of the company, while Cemex would retain a 40% minority share. However, Trevino notes that Cemex is not interested in maintaining any investment if it has to relinquish its controlling stake, so Cemex has been negotiating for fair compensation for complete nationalization. While the BRV is using the same PDSVA teams used to implement the oil industry nationalization, Trevino stated that the PDVSA teams know little about the cement industry. The negotiations have not gone well, as the BRV is using labor and environmental claims to reduce its offer below what Cemex considers to be fair compensation. Cemex continues to negotiate, but eventually expects that it will have to seek recourse to international arbitration. Cemex is covered under Spanish and Dutch Bilateral Investment Treaties, and Trevino expects Cemex to avail itself of the Spanish BIT.

¶3. (C) Cemex is also embroiled in a separate dispute with minority shareholders, who claim that Cemex Venezuela unilaterally sold holdings in third countries below the market price. Since the BRV was intent on nationalizing Cemex's holdings in Venezuela, in June the Cemex Venezuela holding company sold its assets in Panama, the Dominican Republic, Trinidad and Tobago and Guadalupe for a reported $350 million to the parent Cemex company. The Cemex Venezuela subsidiary had 25% minority shareholders who claim that Cemex Venezuela did not obtain full value. According to press reports, PDSVA and a National Commission on Values have demanded that Cemex justify this sale, thereby opening another legal quagmire for Cemex.

¶4. (C) Although its situation is not yet as bad as that of Cemex, Monterrey beverage giant Femsa -- the largest Coca-Cola

bottler in Latin American and the second largest in the world -- also faces difficult problems operating in Venezuela. When Femsa acquired the Venezuelan company Panamco in 2003, it inherited from Panamco an unresolved labor dispute with contract delivery men. In 2006 local Chavista diputados revived the labor claim, demanding $150 million with interest. According to Femsa CEO Jose Antonio Fernandez, the deliverymen representatives offered to settle the case for $15 million, but Femsa refused. Fernandez told the Consul General that Femsa felt that if it begins to pay blackmail, such claims would never stop. Although the Venezuelan Supreme Court reportedly ruled in its favor, the deliverymen have blocked some of the Femsa's distribution centers on three separate occasions, the last time for two weeks. Fernandez reports that the company is continually harassed by the BRV and the deliverymen. Even worse, Femsa has no effective legal recourse since neither the courts nor the legislature will take a definitive stand for fear of angering the Chavistas and the populist masses.

¶5. (C) Femsa's ultimate fear is that its dispute will reach the attention of President Chavez and thus spin out of control. Fernandez opined that Venezuela has no effective mechanisms to prevent second or third level echelon officials from harassing the company but that if the dispute can be kept small and local, it can be controlled. However, if President Chavez becomes interested in the labor dispute then no effective Venezuelan institutions would oppose his whims. Indeed, business analysts here note that that a similar situation occurred with the steel company Sidor, where a labor dispute gradually snowballed until it gained President Chavez's attention, and BRV is now nationalizing Sidor. If Femsa runs into major problems, it does not have recourse to any BIT. Femsa CEO Fernandez noted that, given its presence in Argentina, it could appeal to Argentine President Cristina Fernandez de Kirchner to intervene on its behalf.

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